

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

KEVIN D. FISHER, a natural person,

Plaintiff,

v.

CHRISTOPHER RADKO, a natural person,

RAUCH CORPORATION  
a North Carolina Corporation,

Defendants.

---

COMPLAINT

**07 CIV. 9239**

Index No.: \_\_\_\_\_

**JUDGE ROBINSON**

**JURY TRIAL  
DEMANDED**

**JURISDICTION AND VENUE**

1. This is a civil action for damages for copyright infringement under the Copyright Act (17 U.S.C. § 101 et seq.) and unjust enrichment.
2. This Court has jurisdiction over this action under 28 U.S.C. 1331 and 1338.
3. Venue is proper in this District under 28 U.S.C. 1391(b) in that a substantial part of the acts of infringement complained of herein occurred in New York and in this District, and Defendants either reside and/or conduct business in New York and in this District.

## **THE PARTIES**

4. Kevin D. Fisher, the Plaintiff herein, is an individual residing in Amsterdam, New York; he is an artist and graphic designer whose self-directed or freelance work concentrates on holiday themes.
5. Christopher Radko, Defendant(1) herein, is a famous designer of Christmas tree and other blown glass ornaments and, upon information and belief, he has associated with Rauch Corporation, Defendant(2) herein, for the purposes of marketing, manufacturing, distributing and selling blown-glass ornaments, specifically Christmas ornaments. Mr. Radko, upon information and belief, resides and/or has a place of business in Tarrytown, New York.
6. Upon information and belief, defendant Rauch Corporation (Defendant2) is a North Carolina Corporation with a principal place of business in Gastonia, NC, and currently owns or partially owns and operates CHRISTOPHER RADKO, a division of the Corporation engaged in the design, manufacture, distribution and sale of blown-glass ornaments, specifically Christmas ornaments, that have the approval or imprimatur of Christopher Radko (Defendant1). William H. Goff, Jr., of Terrell, NC, is indicated on the rolls of the North Carolina Secretary of State as the Registered Agent of the Corporation (Exhibit 1). Rauch Corporation, upon information and belief, sells and distributes Christopher Radko ornaments in New York.

### **GENERAL STATEMENT OF FACTS**

7. Plaintiff repeats and re-alleges Paragraphs 1-6 as if fully set forth herein.
8. Plaintiff is the artist of an original rendition of Santa Claus entitled **FLIGHT OF SAINT NICHOLAS** (Exhibit 2), for which a valid Certificate of Copyright Registration has been issued by the Register of Copyrights to Plaintiff as Registration VA 1-412-320 (Exhibit 4a). **FLIGHT OF SAINT NICHOLAS** is marketed and sold by Plaintiff both online and offline. The work was originally published in October, 1998 as a lithographic print.
9. Plaintiff is the artist of an original rendition of Saint Nicholas entitled **EMERALD FROST** (Exhibit 3), for which a valid Certificate of Copyright Registration has been issued by the Register of Copyrights to Plaintiff as Registration VA 1-412-319 (Exhibit 4b). A lithographic rendition of **EMERALD FROST** is marketed and sold by Plaintiff. The work was originally published in October, 2000 as a lithographic print.
10. Plaintiff has held valid copyright under 17 U.S.C. 102(a)(5) in **FLIGHT OF SAINT NICHOLAS** (Exhibit 2) since he placed his rendition into a tangible medium in October 1998, and in **EMERALD FROST** (Exhibit 3) since he placed his rendition into a tangible medium in October 2000.

11. There is not and has never been any licensing or other agreement, or assignment of copyright regarding FLIGHT OF SAINT NICHOLAS (Exhibit 2) or EMERALD FROST (Exhibit 3) in place between Plaintiff and Defendants.
12. Defendant is aware of Plaintiff's work because, for five (5) consecutive years, namely 1997 through 2001, Plaintiff participated in and won a competition that Defendant holds annually for artists working with Christmas themes. That competition requires that artists assign copyright to Defendant for works entered into the competition. Plaintiff never entered THE FLIGHT OF SAINT NICHOLAS or EMERALD FROST into Defendant's competition.
13. Defendant Christopher Radko had access to Plaintiff's unique and original artwork in THE FLIGHT OF SAINT NICHOLAS and EMERALD FROST (Exhibits 2 and 3, respectively) at a public exhibition of Plaintiff's work in 2002.
14. Defendant Christopher Radko had access to Plaintiff's unique and original artwork in THE FLIGHT OF SAINT NICHOLAS (Exhibit 2) when Plaintiff applied for a job with Defendant and used a rough sketch of the work (then in progress) as part of his supporting portfolio.

**COUNT ONE:**  
**COPYRIGHT INFRINGEMENT**  
**(as to Christopher Radko)**

15. Plaintiff repeats and re-alleges Paragraphs 1 through 14 as if fully set forth herein.
16. Plaintiff is, and has at all times been, the copyright owner of exclusive rights in and to THE FLIGHT OF SAINT NICHOLAS and EMERALD FROST (Exhibits 2 and 3).
17. Plaintiff is informed and believes that Defendant<sub>1</sub> has designed, produced, marketed, distributed and sold within the United States, in conjunction with Rauch Corporation, a blown-glass ornament (Exhibit 5) that is substantially similar to Plaintiff's unique and original rendition of FLIGHT OF SAINT NICHOLAS (Exhibit 2) without Plaintiff's permission, and has misappropriated the character and uniqueness of Plaintiff's artwork.
18. Plaintiff is informed and believes that this act of infringement has been willful, intentional, and in disregard of and with indifference to the rights of Plaintiff.

**COUNT TWO:**  
**COPYRIGHT INFRINGEMENT**  
**(as to Christopher Radko)**

19. Plaintiff repeats and re-alleges Paragraphs 1 through 18 as if fully set forth herein.
20. Plaintiff is, and has at all times been, the copyright owner of exclusive rights in and to THE FLIGHT OF SAINT NICHOLAS and EMERALD FROST (Exhibits 2 and 3).
21. Plaintiff is informed and believes that Defendant1 has designed, produced, marketed, distributed and sold within the United States, in conjunction with Rauch Corporation, a blown-glass ornament (Exhibit 6) that is substantially similar to Plaintiff's unique and original rendition of EMERALD FROST (Exhibit 3) without Plaintiff's permission, and has misappropriated the character and uniqueness of Plaintiff's artwork.
22. Plaintiff is informed and believes that this act of infringement has been willful, intentional, and in disregard of and with indifference to the rights of Plaintiff.

**COUNT THREE:**  
**COPYRIGHT INFRINGEMENT**  
**(as to Rauch Corporation)**

23. Plaintiff repeats and re-alleges Paragraphs 1 through 22 as if fully set forth herein.
24. Plaintiff is, and has at all times been, the copyright owner of exclusive rights in and to THE FLIGHT OF SAINT NICHOLAS and EMERALD FROST (Exhibits 2 and 3).
25. Plaintiff is informed and believes that Defendantz has designed, produced, marketed, distributed and sold within the United States, in conjunction with Christopher Radko, a blown-glass ornament (Exhibit 5) that is substantially similar to Plaintiff's unique and original rendition of FLIGHT OF SAINT NICHOLAS (Exhibit 2) without Plaintiff's permission, and has misappropriated the character and uniqueness of Plaintiff's artwork.
26. Plaintiff is informed and believes that this act of infringement has been willful, intentional, and in disregard of and with indifference to the rights of Plaintiff.

**COUNT FOUR:**  
**COPYRIGHT INFRINGEMENT**  
**(as to Rauch Corporation)**

27. Plaintiff repeats and re-alleges Paragraphs 1 through 26 as if fully set forth herein.
28. Plaintiff is, and has at all times been, the copyright owner of exclusive rights in and to THE FLIGHT OF SAINT NICHOLAS and EMERALD FROST (Exhibits 2 and 3).
29. Plaintiff is informed and believes that Defendant<sup>2</sup> has designed, produced, marketed, distributed and sold within the United States, in conjunction with Christopher Radko, a blown-glass ornament (Exhibit 6) that is substantially similar to Plaintiff's unique and original rendition of EMERALD FROST (Exhibit 3) without Plaintiff's permission, and has misappropriated the character and uniqueness of Plaintiff's artwork.
30. Plaintiff is informed and believes that this act of infringement has been willful, intentional, and in disregard of and with indifference to the rights of Plaintiff.

**COUNT FIVE:**  
**UNJUST ENRICHMENT**

31. Plaintiff repeats and re-alleges Paragraphs 1 through 30 as if fully set forth herein.



32. Plaintiff is, and has at all times been, the copyright owner of exclusive rights in and to THE FLIGHT OF SAINT NICHOLAS and EMERALD FROST (Exhibits 2 and 3).
33. Defendants listed herein, by the actions alleged above, have, upon information and belief, collected monies and may continue to collect monies related to each Defendant's blown-glass ornament design interest in connection with the artwork FLIGHT OF SAINT NICHOLAS (Exhibit 2). Based on each Defendant's willful and intentional infringement of Plaintiff's rights in and to FLIGHT OF SAINT NICHOLAS, each Defendant listed herein has been unjustly enriched with monies that in justice and fairness belong to Plaintiff. Plaintiff has been deprived of monies and opportunities to design, produce, market and sell his own ornament based on his artwork that rightfully belong to him and has suffered loss.
34. Defendants listed herein, by the actions alleged above, have, upon information and belief, collected monies and may continue to collect monies related to each Defendant's blown-glass ornament design interest in connection with the artwork EMERALD FROST (Exhibit 3). Based on each Defendant's willful and intentional infringement of Plaintiff's rights in and to EMERALD FROST, each Defendant listed herein has been unjustly enriched with monies that in justice and fairness belong to Plaintiff. Plaintiff has been deprived of monies and opportunities to design, produce, market and sell his own ornament based on his artwork

that rightfully belong to him and has suffered loss.

35. To prevent unjust enrichment, each Defendant listed herein should be required to identify, account for, and provide full restitution of his ill-gotten gains to Plaintiff. Each Defendant listed herein should be ordered to pay all such sums to Plaintiff, together with interest thereon and pay reasonable attorneys' fees and costs.
36. Plaintiff has suffered damage that cannot be adequately remedied at law in that Plaintiff cannot now design, produce, market or sell ornaments based on his artwork without appearing to the public to infringe on Defendants' blown-glass ornaments.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff requests and prays this Honorable Court to enter a judgment against Defendants as follows:

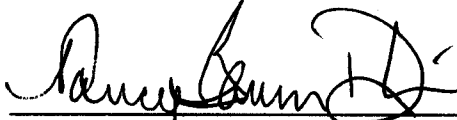
- (1) for injunctive relief against further infringement by either Defendant of Plaintiff's copyrighted works under 17 U.S.C. 502;
- (2) for a finding of willful infringement under 17 U.S.C. 504(c)(2);
- (3) for statutory damages for each infringement of each work by each Defendants pursuant to 17 U.S.C. § 504, statutory damages to be trebled pursuant to 17 U.S.C. § 504(c)(2), or, in the alternative, for disgorgement of all monies collected by each Defendant in restitution for infringing on Plaintiff's copyrighted works together with interest to be calculated from the earliest date such monies were collected by Defendants;
- (4) for an award of court costs and reasonable attorneys' fees to Plaintiff

under 17 U.S.C. 505;

(5) for such other and further relief as the Court may deem to be just and proper.

Dated: 11 October 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy Baum Delain", written over a horizontal line.

**DELAIN & LIEBERT, PLLC**

By: Nancy Baum Delain, Esq.

Bar No. ND9920

400 Clifton Corporate Pkwy.

Suite 470

Clifton Park, NY 12065

Telephone: 518-371-4599

Facsimile: 518-874-5086

Email: nbdelain@ipattorneyfirm.com



**Exhibits**

**Exhibit I**

North Carolina Secretary of State

05/03/2007 05:13 PM



**Elaine F. Marshall**  
Secretary

North Carolina

**DEPARTMENT OF THE  
SECRETARY OF STATE**

PO Box 29622 Raleigh, NC 27626-0622 (919)807-2800

**CORPORATIONS**

Corporations Home  
Search By Corporate Name  
Search For New Corporation  
Search By Registered Agent  
Important Notice  
Corporations FAQ  
Tobacco Manufacturers  
Dissolution Reports  
Non-Profit Reports  
Verify Certification  
Online Annual Reports

Date: 5/3/2007

Click here to:

[View Document Filings |](#)
[Print pre-populated Annual Report Form | Annual Report  
Count | File an Annual Report |](#)
**Corporation Names**

Name	Name Type
NC RAUCH CORPORATION	Legal

**Business Corporation Information**

<b>SOSID:</b>	0362403
<b>Status:</b>	Current-Active
<b>Date Formed:</b>	11/20/1995
<b>Citizenship:</b>	Domestic
<b>State of Inc.:</b>	NC
<b>Duration:</b>	Perpetual

**Registered Agent**

<b>Agent Name:</b>	Goff, Jr., William H.
<b>Registered Office Address:</b>	3769 Mill Run Road Terrell NC 28682
<b>Registered Mailing Address:</b>	3769 Mill Run Road Terrell NC 28682
<b>Principal Office Address:</b>	3769 Mill Run Rd Terrell NC 28682
<b>Principal Mailing Address:</b>	3769 Mill Run Rd Terrell NC 28682

**Stock**

Class	Shares	No Par Value	Par Value
COMMON	1000	Yes	N/A

**LINKS & LEGISLATION**

KBSE B2B Annual Reports  
SOSID Number Correction  
2001 Bill Summaries  
1999 Senate Bills  
Annual Reports 1997  
Corporations 1997  
Register for E-Procurement  
Dept. of Revenue

**ONLINE ORDERS**

Start An Order  
New Payment Procedures

**CONTACT US**

Corporations Division  
Secretary of State's web site

**TOOLS**

Secretary of State Home  
Secretary of State Site Map  
Printable Page

<http://www.secretary.state.nc.us/corporations/Corp.aspx?Itemid=4772403>

North Carolina Department of State Corporate Database Printout: 3 May 2007



**Exhibit 2**

Flight of Saint Nicholas: Reasons to Believe-Santa figurines

01/28/2007 10:47 AM

**Reasons to Believe**

Store Front   Artist Index   All about Santa Claus   News   About us   Contact   Basket Contents   Checkout

Santa Search:

**Flight of Saint Nicholas**

**Sign In**

**Santa Sculptures**  
**Santa Carvings**  
**Russian Santas**  
**Santa Figurines**  
**Santa Ornaments**  
**Antique Santas**  
**Custom Santas**  
**Signature Santas**  
**Bargain Santas**  
**Mixed-media Santas**  
**Santa Themes**  
**Christmas Corner**  
**Santa Pictures**  
**Santa Claus Books**  
**Christmas Signs**  
**Snowman**  
**Naughty Nuts**  
**Gift Cards**  
**Christmas Decor**  
**Santa Yard Art**  
**Store Information**  
**All About Santa**  
**Santa Post**  
**Top 12 Santa List**

**Santa News**  
 \*Artist updates & events  
 \*New Santa releases  
 \*Special promotions  
[\(view latest\)](#)

Start your Wish List!  
[Search Wish Lists](#)

Site Map  
 Customer comments  
 Directions / Map

**Link your site to ours**

Quantity in Stock: none  
 Code: 888888  
 Price: \$445.00

☐ Add antique gold frame + \$50.00

Quantity: 1  [add to wish list](#)




Flight of Saint Nicholas - a 16x20 matted Santa Claus print by Kevin Fisher. Only 500 prints have been reproduced. Each print is hand signed and numbered by Kevin Fisher. The finest of glitters are elegantly hand applied by the artist to each print, capturing the beauty of each scene.

[Home](#) > [Christmas Corner](#) > [Santa Pictures](#) > Flight of Saint Nicholas

A web-based rendition of Plaintiff's original artwork for the purposes of Pleading only. The original artwork will be substituted.

**Exhibit 3**

Emerald Frost Reasons to Believe-Santa figurines

01/28/2007 10:45 AM

**Reasons to Believe**

---

Store Front   Artist Index   All about Santa Claus   News   About us   Contact   Basket Contents   Checkout

Santa Search:

**Sign In**

[Santa Sculptures](#)  
[Santa Carvings](#)  
[Russian Santas](#)  
[Santa Figurines](#)  
[Santa Ornaments](#)  
[Antique Santas](#)  
[Custom Santas](#)  
[Signature Santas](#)  
[Bergin Santas](#)  
[Mixed-media Santas](#)  
[Santa Themes](#)  
[Christmas Corner](#)  
[Santa Pictures](#)  
[Santa Claus Books](#)  
[Christmas Songs](#)  
[Snowman](#)  
[Nativity Sets](#)  
[Gift Cards](#)  
[Christmas Decor](#)  
[Santa Yard Art](#)  
[Store Information](#)  
[All About Santa](#)  
[Santa Fest](#)  
[Top 12 Santa List](#)

**Santa Photos**  
 \*Artist updates & events  
 \*New Santa releases  
 \*Special promotions  
 (view latest)

Start your Wish List!  
 Search Wish List

Site Map  
 Customer comments  
 Directions / Map

**Link your site to ours**



**Emerald Frost**

Quantity in Basket: none  
 Code: M44  
 Price: \$45.00

Artist: Kevin Fisher  
 material: lithograph signed print  
 approx. size (in.): 16 x 20 (matted)

☐ Add Antique gold frame - \$50.00

Quantity: 1  [add to wish list](#)




Emerald Frost - a 16x20 matted Santa Claus print by Kevin Fisher. Only 2000 prints have been reproduced. Each print is hand signed and numbered by Kevin Fisher. The finest of glitters are elegantly hand applied by the artist to each print, capturing the beauty of each scene.

[Home](#) - [Christmas Corner](#) - [Santa Pictures](#) - Emerald Frost

Home   Contact   Ordering Info   About RTB   News   Basket Contents   Checkout

Santa figurines, Santa carvings, Russian Santas, Santa ornaments, Antique Wood Santas, Custom Santa carvings, Signature Santa carvings, Bergin Santa figurines, paper mache Santa Figurines, [3822](#)  
[santas, carvings, Santas](#), Santa Claus sculptures, Pictures of Santa Claus, Mixed-media Santa figurine, Santa Claus Books, History of Santa Claus, History of Christmas, [santa figurines](#)

This page is powered by [Creative Commons](#) (CC). Click here to read how this page is powered by [creativecommons.org](#).

http://reasonstobelieve.com/Merchant2/merchant.mvc?Screen=PROD&amp;Product\_Code=kf46&amp;Category\_Code=PK

Page 1 of 1

A web-based rendition of Plaintiff's original artwork for the purposes of Pleading only. The original artwork will be substituted.





## Exhibit 4a (cont'd)

EXAMINED BY <u>                    </u> CHECKED BY <u>                    </u> CORRESPONDENCE <input type="checkbox"/> Yes	FORM VA  FOR COPYRIGHT OFFICE USE ONLY
---	--

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

**PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)

a. ☐ This is the first published edition of a work, previously registered in unpublished form.

b. ☐ This is the first published edition of a work, previously registered in unpublished form.

c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number                      Year of Registration                     

**PREVIOUS WORKS FOR REGISTRATION** Complete with space 6 on the continuation sheet, complete only for a continuation.

a. **Previously Published** Identify any previously published work or works that this work is based on or derivative of.

b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

**REPORT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name                      Account Number                     

**COMMISSIONER'S ADDRESS** Give name and address to which correspondence about this application should be sent. (Name/Address/PO Box/State/Zip)

Nancy Baum Delain, Esq./Delain Law Office, PLLC/PO Box 295/Burnt Hills/NY/12027

App. only and during telephone call: (518) 371-4599 Fax number: (518) 818-3683

Email: [ndelain@iguttmanfirm.com](mailto:ndelain@iguttmanfirm.com)

Check the box that applies: ☐ author ☐ other copyright claimant ☐ owner of exclusive rights ☐ authorized agent of Kevin D. Fisher

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date: If this application gives a date of publication in space 3, do not sign and submit it before that date.

Nancy Baum Delain Date: 2/25/2007

Signature: [Signature]

**COMMISSIONER'S ADDRESS** Give name and address to which correspondence about this application should be sent. (Name/Address/PO Box/State/Zip)

Delain Law Office, PLLC  
PO Box 295  
Burnt Hills NY 12027

U.S. Copyright Office, Library of Congress, 1010 Locust St., N.W., Washington, D.C. 20540-4071

## Exhibit 4b

## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Margareth Peters*

Register of Copyrights, United States of America

**Form VA**  
For a Work of the Visual Arts

VA 1-412-319

EFFECTIVE DATE OF REGISTRATION  
03 14 07

**1** **1** **1**

**Title of This Work** **Emerald Frost**

**Nature of This Work** **Color Drawing/Painting**

**Previous or Alternative Titles**

**Published in a Collection** **If this work was published in a periodical, serial, or collection, give information about the collective work in which the work appears. Title of Collective Work**

**Collected Works of Kevin D. Fisher Volumes I (Published 2007)**

**If published in a periodical or serial give:** **Volume** **Number** **Issue Date** **On Page**

**2** **a** **2**

**NAME OF AUTHOR** **Kevin D. Fisher**

**DATE OF BIRTH AND DEATH** **Year Born** **Year Died**

**1963**

**NOTE**  
Under the law, the "author" of a work made for hire is the employer, not the employee. For any part of this work that was made for hire, check "Yes" in the space provided, give the employer's name, and leave the space for date of birth and death blank.

**Was this contribution to the work a "work made for hire"?** **Yes** **No**

**Author's Nationality or Domestic Status of Country** **USA**

**Was This Author's Contribution to the Work Anonymous?** **Yes** **No**

**Photoreproduced?** **Yes** **No**

**Nature of Authorship** **Check appropriate boxes. See instructions.**

**3-Dimensional sculpture** **Map** **Technical drawing**

**2-Dimensional artwork** **Photograph** **Text**

**Reproduction of work of art** **Jewelry design** **Architectural work**

**Name of Author** **Date of Birth and Death** **Year Born** **Year Died**

**b**

**Was this contribution to the work a "work made for hire"?** **Yes** **No**

**Author's Nationality or Domestic Status of Country** **USA**

**Was This Author's Contribution to the Work Anonymous?** **Yes** **No**

**Photoreproduced?** **Yes** **No**

**Nature of Authorship** **Check appropriate boxes. See instructions.**

**3-Dimensional sculpture** **Map** **Technical drawing**

**2-Dimensional artwork** **Photograph** **Text**

**Reproduction of work of art** **Jewelry design** **Architectural work**

**3** **a** **3**

**Title in Which Creation of This Work Was Claimed** **Year** **2000**

**Place and Nation of First Publication of This Particular Work** **Country** **Day** **Year** **2000**

**4** **a** **4**

**COPYRIGHT CLAIMANT(S)** **Name and address used by claimant in the notice in the code on the other given in space 3.**

**Kevin D. Fisher, 292 Division St., Amherst, NY 12010**

**TRANSFER** **If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 3, give a brief statement of how the claimant(s) obtained ownership of the copyright.**

**APPLICATION RECEIVED** **SEP 14 2007**

**ONE DEPOSIT RECEIVED**

**TWO DEPOSITS RECEIVED** **SEP 14 2007**

**FUNDS RECEIVED**

**MORE ON BACK** **Complete all applicable items (numbers 5-10 on the reverse side of this page. See enclosed instructions. Sign the form at the end.**

**Page 1 of 2**

Copyright Registration Certificate: *Emerald Frost*, Pg. 1

## Exhibit 4b (cont'd)

EXAMINED BY <u>                    </u> CHECKED BY <u>                    </u> CORRESPONDENCE <input type="checkbox"/> Yes	FORM VA   FOR COPYRIGHT OFFICE USE ONLY
---	--

**DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.**

**PREVIOUS REGISTRATIONS** This application for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No. If your answer is "Yes," give your registration being sought (Check appropriate box.)

a. ☐ This is the first published edition of a work previously registered in unpublished form.

b. ☐ This is the first application submitted by the author or copyright claimant.

c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number                      Year of Registration                     

---

**PREVIOUS WORK OR CONTRIBUTION** Complete this space for work for a substantial work; complete only 1b for a contribution.

a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates.                     

b. **Material Added to This Work** Give a brief, general description of the material that has been added to this work and on which copyright is claimed.                     

---

**EDITORIAL ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and address of Account.                     

---

**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Apt./City/State/Zip                     

Nancy Baum Delain, Esq./Delain Law Office, PLLC/PO Box 295/Burnt Hills/NY/12027

---

Area code and telephone number (516) 371-4599 Fax number (845) 818-3683

E-mail [nbaudelain@ipstonelaw.com](mailto:nbaudelain@ipstonelaw.com)

---

**CERTIFICATION** I, the undersigned, declare under penalty of perjury that I am the

check only one box {

☐ Creator  
☐ Owner copyright claimant  
☐ Owner of exclusive rights  
☒ Authorised agent of Keris D. Fisher  
Name of author or other copyright claimant, or owner or exclusive rights

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date                      If this application gives a date of publication in space 7, do not sign and submit it before that date.

Nancy Baum Delain Date 2/26/2007

---

**Signature** Nancy Baum Delain

---

Certificate will be mailed in window envelopes to this address: Name <u>                    </u> DELAIN LAW OFFICE, PLLC Number/Street <u>                    </u> PO BOX 295 City/State/Zip <u>                    </u> BURNT HILLS NY 12027	<div style="text-align: right; font-size: 2em; font-weight: bold;">9</div> <div style="background-color: black; color: white; padding: 5px; font-size: 0.8em;">             Copyright Office              U.S. Department of Justice              Copyright Division              1075 Locust Street, N.E.              Washington, D.C. 20002-4242              Tel: (202) 755-2744              Fax: (202) 755-2745              E-mail: <a href="mailto:copyright@copyright.gov">copyright@copyright.gov</a> </div>
---	--

\* If you are a foreign national, you must also complete the "Foreign National" section of this form. See the instructions on the back of this form. \* If you are a foreign national, you must also complete the "Foreign National" section of this form. See the instructions on the back of this form. \*

**Exhibit 5**

Defendants' Web-based catalog photograph of Defendant's accused work

**Exhibit 6**

**Defendants' Web-based catalog photograph of Defendant's accused work**